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## A Review of Academic Freedom in African Universities through the Prism of the 1997 ILO/UNESCO Recommendation

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### Abstract

In Europe, Australia, and the United States, the ILO/UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel has been honored more in the breach than in its observance. Now that Africa has returned to an ethos of democratic culture and refinement of the role of the university in the globalization era, the time has come for it also to be assessed on its level of compliance with the ILO/UNESCO Recommendation. This essay takes up that assessment based on four indicators identified in the ILO/UNESCO Recommendation: institutional autonomy, individual rights and freedoms, institutional self-governance, and tenure. The article concludes that academic freedom has found its way back into African universities after its almost complete annihilation between independence and the collapse of the Berlin Wall. However, reforms undertaken in the globalization era in many African universities have undermined gains made in respect to academic freedom during that time.

### Definition of Academic Freedom

Academic freedom is a concept that has resisted broad, widely agreed-upon definition.<sup>1</sup> Tellingly, it is not included in the definition section of the ILO/UNESCO Recommendation, but the body of the document does refer to two definitions of the concept. First, regarding academics, paragraph 27 stipulates

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<sup>1</sup> See, for example, Larry G. Gerber, “‘Inextricably Linked’: Shared Governance and Academic Freedom,” *Academe*, May–June 2001, 22–24. See also M. Abdel Latif, “Academic Freedom: Problems in Conceptualization and Research,” *Higher Education Research and Development* 33, no. 2 (2014): 399–401.

that “higher-education teaching personnel are entitled to the maintaining of academic freedom, that is to say, the right, without constriction by prescribed doctrine, to” the following five sets of freedoms:

1. Freedom of teaching and discussion.
2. Freedom in carrying out research and disseminating and publishing the results thereof.
3. Freedom to express freely their opinion about the institution or system in which they work.
4. Freedom from institutional censorship.
5. Freedom to participate in professional or representative academic bodies.

The Recommendation also recognizes another form of academic freedom in paragraph 18, which describes institutional autonomy as “the institutional form of academic freedom.” These notions of academic freedom are specific to certain duty-holders in the academic freedom equation. We can therefore refer to them as *narrow* or *specific* rather than *broad* concepts. A broad definition of academic freedom that incorporates these two specific forms of academic freedoms is implied but not provided in the document.

For the sake of our analysis, we provide a broad definition of academic freedom, which includes students as one category of rights-holders in the academic freedom equation. Principally carved out for academics, the arena of academic freedom must also provide for higher education institutions and students in order to enable scientific enquiry, access to it, and the dissemination of its findings through teaching and publication, among other means, as well as the application of these findings to promote human welfare within the limits of public order, professional ethics, and social responsibility, without restraint or threat of sanction by governments and other power brokers.

Thus, generally speaking, academic freedom is a facilitator and guarantor for the generation, dissemination, application, and protection of knowledge.

### The ILO/UNESCO Recommendation

The United Nations Educational, Scientific, and Cultural Organization (UNESCO)<sup>2</sup> General Conference adopted the ILO/UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel (hereafter ILO/UNESCO Recommendation) in November 1997, after a thorough process of consultation with academic and legal experts and international nongovernmental organizations (NGOs), especially the International Labour Organization (ILO). The document passed without a dissenting vote, with four countries abstaining.<sup>3</sup>

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<sup>2</sup> UNESCO is the intergovernmental organization with responsibility for setting standards or norms in education.

<sup>3</sup> Donald C. Savage and Patricia A. Finn, “UNESCO and the Universities,” *Academe*, July–August 1999, 43.

The realization of this goal marks a watershed moment in the evolution, consolidation, and standardization of international principles promoting academic freedom. The Recommendation obligates member states and higher education institutions to “take all feasible steps to apply the provisions spelled out [in the Recommendation] to give effect, within their respective territories, to the principles set forth in this Recommendation.”<sup>4</sup> This implies an obligation to respect the commitments made in the document, though these are considered not legally binding.

The 1997 ILO/UNESCO Recommendation complements the 1966 ILO/UNESCO Recommendation concerning the Status of Teachers.<sup>5</sup> The 1997 Recommendation was developed both to facilitate the pivotal contribution of teaching personnel to the fundamental role of higher education, that is, the “development of humanity and the modern society,” and to protect them against “untoward political pressures which could undermine academic freedom.”<sup>6</sup>

The ILO/UNESCO Recommendation contains eleven chapters on comprehensive issues affecting the rights and responsibilities of the university and academics as well as the responsibilities of government and other parties interested in the realization of higher education’s goals. However, for the purpose of this evaluation, the four main elements identified as the constituent elements or rights of academic freedom are delineated for detailed analysis.

The first constituent element, covered in paragraph 17, is institutional autonomy (or *specific* academic freedom for institutions), which includes institutional rights, duties, and responsibilities. The second element, covered in paragraphs 31 and 32, is the rights and freedoms of higher-education teaching personnel, which includes individual rights and freedoms (civil rights, academic freedom, publication rights, and the international exchange of information), self-governance and collegiality, and the duties and responsibilities of higher-education teaching personnel.<sup>7</sup> The third element, covered in paragraphs 25–30, breaks this down into two categories: individual rights/freedoms (or *specific* academic freedom for academics) and institutional self-governance. The fourth element, discussed in paragraphs 46, is “security of employment in the profession, including tenure or its functional equivalent,” which applies to terms and conditions of employment, among them entry into the academic profession, security of employment, appraisal, discipline and dismissal, salaries, workload, social security benefits, health, and safety.<sup>8</sup>

<sup>4</sup> UNESCO, “Recommendation concerning the Status of Higher-Education Teaching Personnel,” in *Records of the General Conference: Twenty-ninth Session, Paris, 21 October to 12 November 1997*, vol. 1, *Resolutions* (Paris: UNESCO, 1997), para. 74.

<sup>5</sup> Adopted on October 5, 1966, at a conference held in Paris at UNESCO headquarters and organized in close cooperation with the ILO.

<sup>6</sup> James Page, “Australian Universities and International Standards: Australian Compliance with the 1997 UNESCO Recommendation Concerning the Status of Higher-Education Teaching Personnel,” *Journal of Higher Education Policy and Management* 29, no. 1 (2007): 95–101.

<sup>7</sup> These rights include freedom “to take part in the governing bodies and to criticize the functioning of higher education institutions” and “to elect a majority of representatives to academic bodies within the higher education institution” (para. 31)

<sup>8</sup> There are also special rights for disabled persons, women, and part-time teaching personnel.

Thus, four main elements in the Recommendation will form the basis for our review of academic freedom in African universities: institutional autonomy, specific academic freedom, institutional self-governance, and tenure.

## The Turn of Africa

Pioneering work on assessing the health of academic freedom in European, North American, and Australian universities have been undertaken and the results indicate that the ILO/UNESCO Recommendation has been honored more in the breach than in its observance.<sup>9</sup>

The time has come to apply the ILO/UNESCO Recommendation to Africa, for a number of good reasons.

In the post-Cold War era, most African states have reembraced human rights and democracy, granting equal opportunities and respecting democratic principles in their constitutions. If in the past only a handful of African countries were parties to the two international human rights covenants, all but two African states are now parties to the International Covenant on Civil and Political Rights (ICCPR). The two exceptions are São Tomé and Príncipe (which has signed but not ratified the ICCPR), and South Sudan, which only gained independence in July 2011 and has been embroiled in a civil war since its birth. With respect to the International Covenant on Economic, Social, and Cultural Rights (ICESCR), Botswana, Mozambique, and South Sudan are non-state parties, with South Africa a signatory only. All other African nations are state parties to the ICESCR.

Additionally, Africa has come up with some key human rights instruments of its own, the most prominent being the African Charter on Human and Peoples' Rights, to which all African states are parties. Though the African Charter does not explicitly guarantee academic freedom, the African Commission on Human and Peoples' Rights, in the landmark ruling *Good v. Botswana*, recognized academic freedom under the Charter.<sup>10</sup>

Furthermore, African states have undertaken significant innovations in their higher education systems—among them privatization, internationalization, harmonization, and the adoption of the entrepreneurial university concept—with the support of NGOs, foreign universities, and so on.<sup>11</sup>

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<sup>9</sup> See, for example, Terence Karran, "Academic Freedom in Europe: A Preliminary Comparative Analysis," *Higher Education Policy* 20, no. 3 (2007): 289–313; John Page, "Compliance with the 1997 UNESCO Recommendation Concerning the Status of Higher Education Teaching Personnel" in *Journal of Higher Education Policy and Management*, no. 29(1) (March 2007): pp 95-101.

<sup>10</sup> *Kenneth Good v. Republic of Botswana*, communication 313/05, May 26, 2010.

<sup>11</sup> Yann Lebeau and David Mills, "From 'Crisis' to 'Transformation'? Shifting Orthodoxies of African Higher Education Policy and Research," *Learning and Teaching* 1, no. 1 (2008): 58–88; Y. G.-M. Lulat, "The Development of Higher Education in Africa," in *African Higher Education: An International Reference Handbook*, ed. Damtew Teferra and Philip G. Altbach (Bloomington: Indiana University Press, 2003); Goolam Mohamedbhai, *The Effects of Massification on Higher Education in Africa* (Accra: Association for the Development of Education in Africa/Association of African Universities, 2008).

Also, in response to flagrant past violations of academic freedom, African scholars came up with two historical documents to protect and promote academic freedom on the continent: the Dar es Salaam Declaration on Academic Freedom and Social Responsibility<sup>12</sup> and the Kampala Declaration on Intellectual Freedom and Social Responsibility, both adopted in 1990, seven years before the ILO/UNESCO Recommendation.

Additionally, a number of African countries, especially former French colonies such as Algeria, Morocco, and Tunisia, have either joined the Bologna Process, are planning to do so, or have adopted similar processes of their own.<sup>13</sup> One may also refer to efforts being made by the Association of African Universities and the African Union toward revitalizing education on the continent.<sup>14</sup>

Finally, for the first time in the history of African constitutional law, “academic freedom” has been enshrined in the constitutions of some of these states, either explicitly or directly. Currently, 14<sup>15</sup> (25.45%) of the 55 total African countries specifically reference or explicitly recognize “academic freedom” in their constitutions.<sup>16</sup> In most of these constitutions, “academic freedom” is linked with freedom of expression and incorporated in the chapter on fundamental rights and freedoms. For example, article 16(1) of the South African Constitution provides that “everyone has the right to freedom of expression, which includes . . . freedom to receive or impart information or ideas, . . . freedom of artistic creativity; and . . . academic freedom and freedom of scientific research.”

In all these situations, “academic freedom” refers to the broad definitional type. Consequently, it can be said that all other laws enacted to establish or regulate the establishment and functioning of the university should respect academic freedom, especially with regard to the four delineated indicators.

Among countries that do not explicitly recognize academic freedom, 8 (12.7%) refer to or recognize academic freedom directly in their constitutions. Direct recognition of academic freedom includes reference to constituent elements of academic freedom (such as “scientific research” or “artistic creativity”) in the constitution. For example, article 49 of the Constitution of the Republic of Cape Verde stipulates:

1. Everyone shall have the freedom to learn, educate, and teach.
2. Freedom of learning, educating, and teaching shall include:

<sup>12</sup> Adopted by delegates from six academic staff associations at the end of the inaugural workshop held in April 1990.

<sup>13</sup> “The Bologna Process in Africa: A Case of Aspiration, Inspiration, or Both?,” May 25, 2008, <http://globalhighered.wordpress.com/2008/05/25/the-bologna-process-a-case-of-aspiration-and-inspiration-in-africa/>.

<sup>14</sup> *Revitalising Higher Education in Africa: Report of First Experts’ Meeting*, October 27–28, 2005, Johannesburg. See [http://www.aau.org/au\\_experts/docs/midrand\\_rep.pdf](http://www.aau.org/au_experts/docs/midrand_rep.pdf).

<sup>15</sup> See table 1.

<sup>16</sup> “Explicit recognition” means specific use of the term *academic freedom* in addition to other rights essential to the full exercise of academic freedom.

- (a) The right to attend teaching and educational establishments and to teach without discrimination, as provided by law.
- (b) The right to choose the type of education and training.
- (c) The prohibition of the state to program education and tuition according to any philosophical, aesthetic, political, ideological, or religious directives.

The constitutions of the 34 remaining African countries (61.8%), refer only indirectly to academic freedom. In these cases, reference to academic freedom can only be inferred from freedom of expression.

**Table 1. Recognition of Academic Freedom in the Constitutions of African States**

<b>Explicit Recognition</b>	<b>Direct Recognition</b>	<b>Indirect Recognition</b>
The Gambia, Ghana, Kenya, Liberia, Libya, Malawi, Namibia, Sierra Leone, South Africa, South Sudan, Sudan, Tunisia, Uganda, Zimbabwe	Algeria, Burkina Faso, Cape Verde, Central African Republic, Egypt, Ethiopia, Gabon, São Tomé and Príncipe	Angola, Benin, Botswana, Burundi, Chad, Comoros, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Egypt, Equatorial Guinea, Eritrea, Guinea, Guinea-Bissau, Lesotho, Madagascar, Mali, Mauritania, Mauritius, Morocco, Mozambique, Niger, Nigeria, Republic of the Congo, Rwanda, Saharawi Arab Democratic Republic, Senegal, Seychelles, Somalia, Swaziland, Tanzania, Togo, Zambia

Therefore there is “a moral and categorical imperative” for African universities and nations to implement the Recommendation. It is time that African states were tested on their level of compliance.

## Outline

This essay will first examine whether and to what extent African states have implemented the ILO/UNESCO Recommendation, applying the four indicators/rights: institutional autonomy, individual rights and freedoms, institutional self-governance, and tenure. This will be followed by an assessment of possible reasons for noncompliance, as well as a consideration of what could be done to increase compliance.

To assess whether or to what extent African countries have complied with the Recommendation, data were gathered from the majority of the 55 total African countries on their constitutions and national legislation on institutional autonomy, individual rights and freedoms, institutional self-governance, and academic tenure. It proved impossible to gather information on all the indicators for 7 countries: Guinea-Bissau, Saharawi Arab Democratic Republic, São Tomé and Príncipe, Somalia, Sudan, Togo, and Tunisia. For 4 other countries, the information gathered was inadequate, meaning that it included fewer than three

of the five indicators.<sup>17</sup> These countries thus were also excluded from the survey. The reasons for the difficulty in accessing information include, among others, the absence of a properly functioning government, the presence of a civil war, or both. Another factor is the absence of established e-governance structures. Also, some universities lack functioning websites or websites that are regularly updated and contain information on the laws establishing or regulating the universities.

The work was limited to public universities for two reasons. First, private universities are a recent phenomenon in Africa.<sup>18</sup> They only appeared in the 1980s and therefore were not subject to the same abuses that the public universities had endured in the past. Second, their numbers now far outstrip those of public universities, such that including them would have made the project too big and difficult to control within the time frame allotted for the exercise.<sup>19</sup> Moreover, information on private universities is even more difficult to assess.<sup>20</sup>

### Institutional Autonomy

Institutional autonomy, according to paragraph 17 of the ILO/UNESCO Recommendation, refers to “that degree of self-governance necessary for effective decision-making by institutions of higher education regarding their academic work, standards, management and related activities.” The chapter of the Recommendation on institutional autonomy deems it a requirement to enable the “proper enjoyment of academic freedom and compliance with the duties and responsibilities listed.”

Under institutional autonomy, we examined whether the institution is endowed with financial, administrative, pedagogical, proprietary, and disciplinary autonomy (among other types) and possesses the right to sue and to be sued in its own capacity.<sup>21</sup> This also involves whether the country’s head of state<sup>22</sup> doubles as the chancellor of the university and whether the appointment of the vice chancellor<sup>23</sup> is made by or influenced in any way by the head of state or the governing authority. Where all conditions are met, the country is said to meet the autonomy test, and that will constitute compliance. Where not all of the

<sup>17</sup> The fifth indicator is the reference to academic freedom in the constitutions of African countries.

<sup>18</sup> Megan Lindow, *Weaving Success: Voices of Change in African Higher Education* (New York: Institute of International Education, 2011).

<sup>19</sup> Kudzai Mashininga, “Private Universities Set to Overtake Public Institutions,” *University World News*, March 4, 2012, <http://www.universityworldnews.com/article.php?story=20120302141207184>.

<sup>20</sup> N. V. Varghese, ed., *Growth and Expansion of Private Higher Education in Africa* (Paris: UNESCO, 2006).

<sup>21</sup> In this regard, one can refer to the statutes of Angola’s Universidade Augustinho Neto, which has a comprehensive set of autonomies, including statutory, scientific, pedagogical, administrative, proprietary, financial, and disciplinary autonomy; Estatuto Orgânico da Universidade Agostinho Neto, Decreto Presidencial 229/11, August 19, 2011, Article 8(1). For a critical review of the subject in the context of Nigeria, see A. K. Okorosaye-Orubite et al., “University Autonomy, Academic Freedom and Academic Staff Union of Universities’ (ASUU) Struggles in Nigeria: A Historical Perspective,” *Asian Social Science* 8, no. 12 (2012): 265.

<sup>22</sup> Or government or a minister of state.

<sup>23</sup> Or rector or president is not influenced in any way.

conditions are met, this will constitute qualified compliance. Where none of the conditions are met, the country is assessed as being noncompliant.

None of the countries surveyed specifically refer to the protection of institutional autonomy in their constitutions. Respect for institutional autonomy is, therefore, referred from legislative enactments. Out of 43 countries,<sup>24</sup> 13<sup>25</sup> (30.2%), qualified as fully compliant in terms of providing institutional autonomy for their institutions of higher education. For example, in Ghana public universities are established as bodies corporate with perpetual succession, with the right to sue and be sued.<sup>26</sup> The chancellor is elected by an electoral college made up of an equal number of members from the university council and the academic board.<sup>27</sup> The qualification of a chancellor is provided for in the constitution,<sup>28</sup> and the country's president is specifically barred, while he continues in office as president, from holding the office of chancellor or head of any university in Ghana.<sup>29</sup> Vice chancellors are also appointed by each university's electoral college.

Twenty countries, or nearly half the total number surveyed (46.5%), met qualified compliance. In most of these cases, the laws setting up such universities confer on them various form of institutional autonomy. However, this is followed by other prescriptions that compromise the autonomy granted by the same law. For instance, in the case of Botswana, though section 1 of the University Act grants autonomy to the university,<sup>30</sup> the president of the republic serves as the chancellor.<sup>31</sup> Also, the chancellor may, where he considers it to be in the public interest, direct the minister of education in writing to assume the exercise of any power or the performance of any duty conferred or imposed on the university council or on the vice chancellor by the University Act or by statutes enacted by the university council.<sup>32</sup> In addition, the vice chancellor is appointed by the president of the republic upon consultation with the University Council and conditions as may be determined by the president. In cases of qualified compliance, therefore, a claw-back clause is in effect.<sup>33</sup>

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<sup>24</sup> Information on this indicator could not be found for Chad, Guinea, Guinea-Bissau, Liberia, Mali, Niger, the Saharawi Arab Democratic Republic, São Tomé and Príncipe, Somalia, South Sudan, Sudan, and Togo.

<sup>25</sup> See table 2.

<sup>26</sup> University of Ghana Act, 2010, section 1.

<sup>27</sup> See, for example, *ibid.*, section 6(1) and (2).

<sup>28</sup> Statutes of the University of Ghana, section 3(5): "A person shall not be nominated and elected to the Office of Chancellor unless he or she satisfies the requirements of Clause 2(b)–(e) Article 94 of the Constitution of the Republic of Ghana."

<sup>29</sup> Constitution of the Fourth Republic of Ghana, article 68(1).

<sup>30</sup> University of Botswana Act, 1982 (Act 24).

<sup>31</sup> *Ibid.*, section 5(1).

<sup>32</sup> *Ibid.*, section 5(3).

<sup>33</sup> Rosalyn Higgins refers to a claw-back clause as a limitation clause "that permits, in normal circumstances, breach of an obligation for a specified number of public reasons"; Higgins, "Derogations under Human Rights Treaties," *British Yearbook of International Law* 48 (1976–77): 281.



The survey revealed that in 10 countries (23.3% of the total) there is noncompliance.<sup>34</sup> According to the laws of the Democratic Republic of the Congo, for example, the rector is appointed by the president of the republic on the recommendation of the commissioner of state for higher education and scientific research. This rule notwithstanding, the president may appoint any person he deems worthy and competent as rector.<sup>35</sup> The president is also vested with power to appoint people to other key positions of the university.<sup>36</sup> The rector appoints deans and vice deans and heads of departments,<sup>37</sup> and ministerial regulations are issued to determine programs, their duration, and conditions for admission.

Table 2. Level of Compliance with Institutional Autonomy

<b>Compliance (30.2%)</b>	<b>Qualified compliance (46.5%)</b>	<b>Noncompliance (23.3%)</b>	<b>Data not available</b>
Burkina Faso, Cape Verde, Comoros, Egypt, Equatorial Guinea, Ghana, Kenya, Mauritius, Morocco, Namibia, Seychelles, South Africa, Swaziland	Algeria, Angola, Benin, Cote d'Ivoire, Djibouti, Ethiopia, Gabon, Libya, Madagascar, Malawi, Mauritania, Nigeria, Republic of the Congo, Rwanda, Senegal, Sierra Leone, Tanzania, Tunisia, Uganda, Zimbabwe	Botswana, Burundi, Cameroon, Central African Republic, Democratic Republic of the Congo, Eritrea, Gambia, Lesotho, Mozambique, Zambia	Chad, Guinea, Guinea Bissau, Liberia, Mali, Niger, Saharawi Arab Democratic Republic, São Tomé and Príncipe, Somalia, South Sudan, Sudan, Togo

### Individual Rights and Freedoms

This indicator refers to the individual rights and freedoms of the academic (or *specific* academic freedom in relation to teaching and research). Paragraph 27 of the ILO/UNESCO Recommendation provides that “higher-education teaching personnel are entitled to the maintaining of academic freedom, that is to say, the right, without constriction by prescribed doctrine, to freedom of teaching and discussion, freedom in carrying out research and disseminating and publishing the results thereof, freedom to express freely their opinion about the institution or system in which they work, freedom from institutional censorship and freedom to participate in professional or representative academic bodies.”

The indicators for determining compliance here are the elements that the ILO/UNESCO Recommendation assigns to academic freedom for academics—teaching, research, freedom of expression about the institution, freedom from censorship, and freedom of association. These freedoms are in addition to those “internationally recognized civil, political, social and cultural rights applicable to all

<sup>34</sup> See table 2.

<sup>35</sup> Ordonnance no. 81/160, October 7, 1981, portant statut du personnel de l'Enseignement Supérieur et Universitaire, article 12.

<sup>36</sup> Ibid., articles 7–15.

<sup>37</sup> Ibid., articles 20–26.

citizens” (para. 26). Academic freedom in this respect is one of the specific forms that together constitute *broad or general* academic freedom. The level of compliance was determined by examining legislative enactments and the university statutes of the universities to determine the extent to which these rights and freedoms are incorporated in the laws establishing such institutions.

In total, complete information for this measure was found for 34 of the 55 countries (61%). That means, for 21 (39%) of the 55 total African countries no data was available for assessment. Of the 34 countries surveyed, 21 (61.7%) met the compliance test;<sup>38</sup> 1 country (3%), met the qualified compliance test; and 12 (35.2%) were noncompliant. An example of a compliant state is Kenya, whose University Act, 2012 (no. 42) section 29 (1) and (2) provides that

- (1) A University, in performing its functions shall—
  - (a) have the right and responsibility to preserve and promote the traditional principles of academic freedom in the conduct of its internal and external affairs; ...
- (2) A member of the academic staff of a university shall have the freedom, within the law, in the member’s teaching, research and any other activities either in or outside the university, to question and test received wisdom, to put forward new ideas and to state opinions, and shall not be disadvantaged, or subject to less favorable treatment by the university, for the exercise of that freedom.

A state’s noncompliance was determined mainly by the fact that, although the information was available, no reference to recognition of individual academic freedom for academics was found. However, in the case of Eritrea, there was a specific indication of nonrecognition of academic freedom for individual academics. The document states that “Lecturers who attend conferences are required to fill a form, which includes comments of the head of the institution, after returning from leave. This form is submitted to the office of the Executive Director of NBHE [National Board of Higher Education] for onward submission to the President’s Office.”<sup>39</sup>

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<sup>38</sup> See table 3 for details.

<sup>39</sup> National Board of Higher Education, “Guidelines for Travel to Attend Workshops and Conferences,” at 4.

Table 3. Level of Compliance with Individual Rights and Freedoms

<b>Compliant (61.7%)</b>	<b>Qualified compliant (3.0%)</b>	<b>Noncompliant (35.3%)</b>	<b>Data not available (39%)</b>
Algeria, Angola, Benin, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Equatorial Guinea, Ethiopia, Ghana, Kenya, Madagascar, Mauritania, Mozambique, Rwanda, Senegal, Seychelles, Sierra Leone, South Africa, Uganda	Morocco	Botswana, Côte d'Ivoire, Djibouti, Eritrea, Lesotho, Malawi, Namibia, Nigeria, Swaziland, Tanzania, Zambia, Zimbabwe	Chad, Comoros, Democratic Republic of the Congo, Republic of the Congo, Egypt, Gabon, the Gambia, Guinea, Guinea-Bissau, Liberia, Libya, Mali, Mauritius, Niger, Saharawi Arab Democratic Republic, São Tomé and Príncipe, Somalia, South Sudan, Sudan, Togo, Tunisia

### Institutional Self-Governance

The third indicator is self-governance and collegiality. Paragraph 31 of the ILO/UNESCO Recommendation provides that “higher-education teaching personnel should have the right and opportunity, without discrimination of any kind, according to their abilities, to take part in the governing bodies and to criticize the functioning of higher education institutions, including their own, while respecting the right of other sections of the academic community to participate, and they should also have the right to elect a majority of representatives to academic bodies within the higher education institution.”<sup>40</sup>

This statement refers implicitly to two bodies, the governing council and the academic board or senate. The former is generally equated to the university (administrative) council, the executive body of a university's governance system. It is usually responsible for financial matters and the strategic direction of the university as well as for implementing the academic board's academic decisions, including appointments. The senate is responsible for determining the university's academic direction.

Applying the principles of paragraph 31 calls for including academic staff on the council; in the case of the senate, their representation should be in the majority. The goal here is to encourage democracy

<sup>40</sup> Para. 31. See also para. 32: Collegial decision-making should encompass decisions regarding the administration and determination of policies of higher education, curricula, research, extension work, the allocation of resources, and other related activities in order to improve academic excellence and quality for the benefit of society at-large. Para. 32.

within the university system in order to ensure accountability and enable the flourishing of academic freedom. Hence this measure includes internal processes and protocols to ensure the effective exercise and enjoyment of the relevant civil and political rights, such as the right to criticize and the right to participate, as well as the inclusion of the broad issues over which academics can exercise critical review and be involved in discussions. Also critical to determining the democratic structure of these bodies is whether the national government is represented in any of these bodies and if so the extent to which its presence confers on it undue authority, therefore potentially derailing the university's ability to use these structures to ensure and promote institutional autonomy. These factors are used to determine if African countries respect the right of internal self-governance in their higher education institutions.

The survey in this area therefore focused on the two bodies: the university council, equivalent to the executive, and the senate, equivalent to the legislature. Of course, the council is also granted some legislative powers, or at least the power to propose issues for the senate to review, deliberate on, and submit to the council for its ultimate endorsement.

In the case of university councils, we assessed whether control and representation are subject to the whims and caprices of the government and what decisions the councils, rather than the government, can make for the university. The key here is the balance of representation of the university hierarchy, the academic staff association, government, and the community.

The following information was found on the university councils. Of the 55 countries, available information was collected on 35 countries (63.6% of the total African countries). No or insufficient information was found for the remaining 20 countries (36.4%). Of the 35 countries for which information was available, 16 recorded compliance (61.7%), 6 (17.1%) qualified compliance, and 13, noncompliance (37.2%).

Information on the senate was found for 36 countries (61.8% of total African countries). Of this number, the survey revealed 77.7% (28 countries) compliance; 22.3% (8 countries) noncompliance, and 0% qualified compliance. Two of the remaining 36 countries surveyed had information on one of the institutions only; 13 of them were fully compliant for both bodies; 13 were compliant for one body with qualified compliance or noncompliance for the other body; and 2 were noncompliant for both bodies. An example of a country full compliant for both is South Africa:

At least 60 per cent of the members of a council must be persons who are not employed by, or students of, the public higher education institution concerned.<sup>41</sup>

The chairperson, vice-chairperson and other office-bearers for a University Council should be from among its members in the manner determined by the institutional statute.<sup>42</sup>

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<sup>41</sup> Higher Education Act, 1997 (Act 101), S27(6).

<sup>42</sup> *Ibid.*, S26(3).

The majority of members of a senate must be academic employees of the public higher education institution concerned.<sup>43</sup>

One case of noncompliance comes from the University of Djibouti, where members of the Administration Board (the university council) are appointed by decree for a period of three years; and the majority of such appointees are representatives of the public service.<sup>44</sup> Rwanda's senates, whose organization, functioning and responsibilities are determined by a prime minister's order, epitomize noncompliance.<sup>45</sup> Another example of noncompliance is found in Ethiopia's public higher education institutions. There, apart from the difficulty associated with the fact that membership and the number of members of each public institution's senate and their terms of office are determined by the law establishing the public institution, the power to offer appointments, which are limited to "meritorious and senior members of the academic staff," is reserved for the president of the institution.<sup>46</sup>

Table 4a. Level of Compliance with Institutional Self-Governance (University Councils)

<b>Compliant (45.7%)</b>	<b>Qualified compliant (17.1%)</b>	<b>Noncompliant (37.2%)</b>	<b>Data not available (36.4%)</b>
Angola, Cape Verde, Comoros, Ghana, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Niger, Nigeria, Seychelles, Sierra Leone, South Africa, Uganda	Cameroon, Ethiopia, Mauritania, Morocco, Rwanda	Algeria, Benin, Botswana, Central African Republic, Côte d'Ivoire, Djibouti, Equatorial Guinea, Eritrea, Kenya, Mali, Swaziland, Tanzania, Zimbabwe	Burkina Faso, Burundi, Chad, Congo, Democratic Republic of the Congo, Egypt, Gabon, the Gambia, Guinea, Guinea-Bissau, Liberia, Libya, Saharawi Arab Democratic Republic, São Tomé and Príncipe, Senegal, Somalia, South Sudan, Sudan, Togo, Tunisia

<sup>43</sup> Ibid., S28(4).

<sup>44</sup> République de Djibouti, décret no. 2007-0167/PR/MENESUP, fixant le statut particulier de l'Université de Djibouti, article 4.

<sup>45</sup> Republic of Rwanda, Law no. 27/2013, May 24, 2013, Governing Organization and Functioning of Higher Education, article 32.

<sup>46</sup> Federal Democratic Republic of Ethiopia, Higher Education Proclamation, article 50.

Table 4b. Level of Compliance with Institutional Self-Governance (Senate)

<b>Compliant (77.7%)</b>	<b>Qualified compliant (0%)</b>	<b>Noncompliant (22.3%)</b>	<b>Data not available (35%)</b>
Algeria, Angola, Benin, Botswana, Cape Verde, Côte d'Ivoire, Djibouti, Equatorial Guinea, Ghana, Kenya, Lesotho, Madagascar, Malawi, Mali, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Seychelles, Sierra Leone, South Africa, Swaziland, Tanzania, Uganda, Zambia, Zimbabwe		Burkina Faso, Central African Republic, Cameroon, Comoros, Eritrea, Ethiopia, Mauritania, Rwanda	Burundi, Chad, Congo, Democratic Republic of the Congo, Egypt, Gabon, the Gambia, Guinea, Guinea-Bissau, Liberia, Libya, Saharawi Arab Democratic Republic, São Tomé and Príncipe, Senegal, Somalia, South Sudan, Sudan, Togo, Tunisia

## Tenure

The last indicator for discussion is tenure – related to the right to work, which is guaranteed under ILO Conventions and the ICESCR, among others.<sup>47</sup> In fact, tenure is one of the key issues that led to the ILO's interest and involvement in the drafting of the Recommendation. In different African states, there have been abuses of this right, by governments and university management, against academics as a means to silence them. In recent times, violation of right to tenure takes more subtle forms such as bullying, “marriage and baby penalties” imposed on women,<sup>48</sup> reassignment to a new faculty or department or new teaching areas, and so on.

According to paragraph 46 of the ILO/UNESCO Recommendation, tenure refers to “security of employment in the profession”. Further, it ensures that

... higher-education teaching personnel who secure continuing employment following rigorous evaluation can only be dismissed on professional grounds and in accordance with due process. . . . It should be as far as possible even when changes in the organization of or within a higher education institution or system are made, and should be granted, after a reasonable period of probation, to those who meet stated objective criteria in teaching,

<sup>47</sup> See, for example, ILO Convention concerning Employment Policy (ILO no. 122), 569 UNTS 65, *entered into force* on July 15, 1966, and article 6 of the ICESCR.

<sup>48</sup> Patricia Roos and Mary Gatta, “Gender (In)Equity in the Academy: Subtle Mechanisms and the Reproduction of Inequality,” *Research in Social Stratification and Mobility* 27 (2009): 177–200, <http://www.yale.edu/ciqle/INAUGURAL%20PAPERS/genderequity507entire.pdf>.

and/or scholarship, and/or research to the satisfaction of an academic body, and/or extension work to the satisfaction of the institution of higher education.

With respect to tenure, we gathered data on the existence or not of protections against arbitrary dismissal; procedures to be followed before dismissal or application of disciplinary sanctions; the possibility of appeal to a higher body or a regular court; and the right to form unions, strike and engage in collective bargaining, and so on.

It is important to note that in most African countries, because of governments' dominant role in financing education, lecturers are recognized as part of the civil service. Perhaps for this reason, in a significant number of African countries the laws establishing or regulating universities do not include protection of tenure. This survey thus relied on constitutional provisions on the right to work or the country's labor laws to determine if tenure is protected for university academic staff.

Information was not available on 8 (15%) of the 55 countries. Of the 47 countries (85%) that could be evaluated, 43 (91.5%) met the compliance standard based on the review of their constitution's protection of the right to work, the laws in the university statutes, or the labor codes. There was 1 case (2.1%) of qualified compliance, and there were 3 cases (6.4%) of noncompliance.

An example of compliance comes from the University of Ghana, whose founding act states that

- (1) The appointment or promotion of academics shall be based purely on merit in accordance with principles of fairness and non-discrimination and in accordance with the provisions of the Act and these Statutes.
- (2) In considering an application for an appointment or promotion of a senior member, the appointing authority shall be bound by the criteria set out in Schedule F to these Statutes.

There is also an appeals board, whose function is to "hear and determine on appeal matters on breach of employment contracts by the University; and, the promotion of persons duly employed by the University."<sup>49</sup> Further, the university recognizes the right of every employee to freedom of association and the right to demonstrate to protect one's economic and social interests.<sup>50</sup>

Benin offers an example of qualified compliance with tenure. Under its laws, the right to work is guaranteed.<sup>51</sup> Also, dismissal is supposed to conform to article 131 of the *Statut général des agents permanents de l'Etat*. In other instances, lecturers may be disciplined by the disciplinary council of the universities of Benin, which is established by a ministerial decree.<sup>52</sup> However, lecturers must serve at least ten years

<sup>49</sup> University of Ghana Act, 2010 (Act 806), S32(2). Also see S33(1), which states that the university council may enact statutes for carrying this act into effect and in particular to "regulate the (i) appointment, (ii) conditions of service, (iii) termination of appointment."

<sup>50</sup> Ibid., S51(1).

<sup>51</sup> *Statut général des agents permanents de l'Etat*, décret no. 2005-386, June 23, 2005, article 12,.

<sup>52</sup> Ibid.

before they can quit their jobs without potentially having to refund the money the government spent for their training.<sup>53</sup>

An example of noncompliance comes from Mauritania, where the board of directors of a university creates within it a disciplinary board and, if necessary, ad hoc committees.<sup>54</sup> Some sanctions are imposed by decision of the minister of higher education based on a report from the chairman of the board of directors of the establishment after notice by the disciplinary committee concerned.<sup>55</sup> Other sanctions are made by joint order of the ministers in charge of higher education and public service, based on a decision by the chairman of the board following a report by the disciplinary committee of the Scientific and Pedagogical Council. Only the minister of higher education can take disciplinary action against the president of a university.<sup>56</sup>

Table 5. Level of Compliance with Tenure

<b>Compliant (91.5%)</b>	<b>Qualified compliant (2.1%)</b>	<b>Noncompliant (6.4%)</b>	<b>Data not available (15%)</b>
Algeria, Angola, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Côte d'Ivoire, Democratic Republic of Congo, Djibouti, Egypt, Equatorial Guinea, Ethiopia, Gabon, the Gambia, Ghana, Guinea, Kenya, Liberia, Libya, Malawi, Mali, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Republic of Congo, Rwanda, Senegal, Seychelles, Sierra Leone, South Africa, Swaziland, Tanzania, Tunisia, Uganda, Zambia, Zimbabwe	Benin	Lesotho, Madagascar, Mauritania	Eritrea, Guinea- Bissau, Saharawi Arab Democratic Republic, São Tomé and Príncipe, Somalia, South Sudan, Sudan, Togo

### Country Analysis of the ILO/UNESCO Recommendation

Based on the survey carried out and its findings outlined above, the table below indicates the compliance level of each country. This table is followed by a ranking based on the level of compliance attained by each country surveyed.

<sup>53</sup> Ibid., article 51.

<sup>54</sup> République islamique de Mauritanie, ordonnance no. 2006-007/CMJD, portant organisation de l'enseignement supérieur, article 10.

<sup>55</sup> République islamique de Mauritanie, décret no. 2006-136/PM, portant statut particulier du corps des enseignants technologues, article 36.

<sup>56</sup> Ibid.



Table 6. Comprehensive Country Analysis of the ILO/UNESCO Recommendation, 1997

	<b>Institutional autonomy</b>	<b>Individual rights and freedoms in legislation</b>	<b>Democratic structure of university council/composition of academic staff in senate (institutional self-governance)</b>	<b>Tenure</b>	<b>Constitutional reference to academic freedom</b>
Algeria	Qualified compliance	Compliance	Noncompliance/compliance	Compliance	Direct
Angola	Qualified compliance	Compliance	Compliance/compliance	Compliance	Explicit
Benin	Qualified compliance	Compliance	Noncompliance/compliance	Qualified compliance	Explicit
Botswana	Noncompliance	Noncompliance	Noncompliance/compliance	Compliance	Explicit
Burkina Faso	Compliance	Compliance	NA/noncompliance	Compliance	Explicit
Burundi	Noncompliance	Compliance	NA	Compliance	Indirect
Cameroon	Noncompliance	Compliance	Qualified compliance/noncompliance	Compliance	Explicit
Cape Verde	Compliance	Compliance	Compliance/compliance	Compliance	Indirect
Central African Republic	Noncompliance	Compliance	Noncompliance/noncompliance	Compliance	Indirect
Chad	NA	Noncompliance	NA/NA	Compliance	Indirect
Comoros	Compliance	Noncompliance	Compliance/noncompliance	Compliance	Explicit
Democratic Republic of the Congo	Noncompliance	Noncompliance	Compliance/NA	Compliance	Direct
Republic of the Congo	Qualified compliance	Noncompliance	NA	Compliance	Indirect
Côte d'Ivoire	Qualified compliance	Noncompliance	Noncompliance/ compliance	Compliance	Direct
Djibouti	Qualified compliance	Noncompliance	Noncompliance/compliance	Compliance	Direct
Egypt	Compliance	Compliance	NA/NA	Qualified compliance	Direct
Equatorial Guinea	NA	Noncompliance	NA	Compliance	Direct
Eritrea	Noncompliance	Noncompliance	Noncompliance/noncompliance	NA	Explicit
Ethiopia	Qualified compliance	Compliance	Qualified compliance/qualified compliance	Compliance	Indirect
Gabon	Qualified compliance	Noncompliance	NA	Compliance	Indirect
The Gambia	Noncompliance	Noncompliance	NA	Compliance	Explicit
Ghana	Compliance	Compliance	Compliance/compliance	Compliance	Indirect
Guinea	NA	Noncompliance	NA	Compliance	Explicit
Guinea-Bissau	NA	Qualified compliance	NA	NA	Indirect
Kenya	Compliance	Compliance	Noncompliance/ compliance	Compliance	Indirect
Lesotho	Noncompliance	Noncompliance	Compliance/compliance	Compliance	Indirect
Liberia	NA	Compliance	NA	Compliance	Indirect
Libya	Qualified compliance	Qualified compliance	NA	Compliance	Indirect

	<b>Institutional autonomy</b>	<b>Individual rights and freedoms in legislation</b>	<b>Democratic structure of university council/composition of academic staff in senate (institutional self-governance)</b>	<b>Tenure</b>	<b>Constitutional reference to academic freedom</b>
Madagascar	Qualified compliance	Compliance	Compliance/compliance	Noncompliance	Explicit
Malawi	Qualified compliance	Compliance	Compliance/compliance	Compliance	Indirect
Mali	NA	Qualified compliance	NA/compliance	Compliance	Indirect
Mauritania	Qualified compliance	Qualified compliance	Qualified compliance/noncompliance	Noncompliance	Indirect
Mauritius	Compliance	Noncompliance	Compliance/compliance	Compliance	Indirect
Morocco	Compliance	Qualified compliance	Qualified compliance/compliance	Compliance	Indirect
Mozambique	Noncompliance	Noncompliance	Compliance/compliance	Compliance	Indirect
Namibia	Compliance	Compliance	Compliance/compliance	Compliance	Indirect
Niger	NA	Noncompliance	Compliance/compliance	Compliance	Indirect
Nigeria	Qualified compliance	Noncompliance	Compliance/compliance	Compliance	Indirect
Rwanda	Qualified compliance	Compliance	Qualified compliance/noncompliance	Compliance	Indirect
Saharawi Arab Democratic Republic	NA	NA	NA	NA	Indirect
São Tomé and Príncipe	NA	NA	NA	NA	Direct
Senegal	Qualified compliance	Compliance	NA	Compliance	Indirect
Seychelles	Compliance	Compliance	Compliance/compliance	Compliance	Explicit
Sierra Leone	Qualified compliance	Compliance	Compliance/compliance	Compliance	Indirect
Somalia	NA	NA	NA	NA	Indirect
South Africa	Compliance	Compliance	Compliance/compliance	Compliance	Indirect
South Sudan	NA	Compliance	NA	NA	Indirect
Sudan	NA	Compliance	NA	NA	Explicit
Swaziland	Compliance	Noncompliance	Noncompliance/compliance	NA	Indirect
Tanzania	Qualified compliance	Noncompliance	Noncompliance/compliance	Compliance	Indirect
Togo	NA	Noncompliance	NA	NA	Direct
Tunisia	Qualified compliance	Compliance	NA	Compliance	Indirect
Uganda	Qualified compliance	Compliance	Compliance/qualified compliance	Compliance	Explicit
Zambia	Noncompliance	Noncompliance	Noncompliance/compliance	Compliance	Explicit
Zimbabwe	Qualified compliance	Compliance	Noncompliance/compliance	Compliance	Indirect

## Ranking

Where information was gathered on fewer than three of the five indicators for a country, the data were considered not adequate to merit an assessment. Using this yardstick, information (covering three to five of the indicators) was found for 44 countries, or 80% of the total number of African countries.

The tally is broken into “free” (for the countries that garnered between 75% and 100%), “partly free” (50–74%), and “not free” (0–49%). The survey found 9 countries (20.5%) to be “free.” The largest conglomerate was in the “partly free” category, 20 countries (45.5%). This is followed by the “not free” category, made up of 15 countries (34%).

Table 7. Academic Freedom Rankings

Score	Country	Academic freedom ranking
100%	Cape Verde	Free (80–100%)
100%	Ghana	
100%	South Africa	
90%	Kenya	
85%	Uganda	
80%	Equatorial Guinea	
80%	Namibia	
80%	Seychelles	
75%	Rwanda	
70%	Angola	Partly Free (50–74%)
70%	Sierra Leone	
65%	Morocco	
60%	Algeria	
60%	Burkina Faso	
60%	Central African Republic	
60%	Egypt	
60%	Ethiopia	
60%	Malawi	
60%	Mauritius	
60%	Mozambique	
60%	Tunisia	
50%	Comoros	
50%	Libya	
50%	Madagascar	
50%	Nigeria	
50%	Senegal	
50%	Swaziland	
50%	Tanzania	
50%	Zimbabwe	
45%	Cameroon	Not free (0–49%)
45%	Mauritania	
40%	Benin	

Score	Country	Academic freedom ranking
40%	Burundi	
40%	Côte d'Ivoire	
40%	Djibouti	
40%	Lesotho	
40%	Niger	
30%	Botswana	
30%	Democratic Republic of the Congo	
30%	Republic of the Congo	
30%	Gabon	
25%	Zambia	
20%	The Gambia	
0%	Eritrea	
NA	Chad	NA
NA	Guinea	
NA	Guinea-Bissau	
NA	Liberia	
NA	Mali	
NA	Saharawi Arab Democratic Republic	
NA	São Tomé and Príncipe	
NA	Somalia	
NA	South Sudan	
NA	Sudan	
NA	Togo	

## Conclusion and Recommendations

The evaluation has sought to analyze the health of academic freedom in African universities based on the existing laws of these countries. The measuring rod is comprised of the ILO/UNESCO

Recommendation's four principal indicators on academic freedom: institutional autonomy, self-governance, individual rights and freedoms, and tenure. The results show that while Africa has come a long way in restructuring its laws to accommodate African freedom, most countries are lagging behind.

To enable defaulting countries to improve on their laws and grant greater respect for academic freedom, external entities such as the Joint Committee of Experts on the Application of the Recommendations Concerning Teaching Personnel (CEART)<sup>57</sup> and the African Commission on Human and Peoples' Rights will need to scale up their activities.

For CEART, it is evident that the current schedule of meeting every three years is woefully inadequate. Moreover, CEART does not engage directly in more effective promotional activities with all

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<sup>57</sup> The body set up to monitor progress toward international compliance with the ILO/UNESCO Recommendation and investigate allegations of nonobservance; [http://www.ilo.org/global/industries-and-sectors/education/WCMS\\_162256/lang--en/index.htm](http://www.ilo.org/global/industries-and-sectors/education/WCMS_162256/lang--en/index.htm).

relevant interested parties. Perhaps CEART can do a better job by creating two separate committees to monitor compliance of the 1966 document (the ILO/UNESCO Recommendation concerning the Status of Teachers) (for teachers in primary and secondary schools) and the 1997 Recommendation (for academics in higher education institutions). Further, activities of the two committees should have regional subcommittees to take into account the cultural, political, and developmental peculiarities that affect each region and to address them taking into account existing region-specific instruments on academic freedom, such as the Kampala Declaration in the case of Africa, in seeking to promote academic freedom in each locality. Additionally, the CEART subcommittees should be given additional resources to enable them meet twice a year, as treaty-based human rights bodies do, with the power to also schedule special sessions to deal with emergency situations.<sup>58</sup>

CEART should also set up the special rapporteur system, on a thematic basis, to cover the four pillars of academic freedom—institutional autonomy, self-governance, individual rights and freedoms, and tenure. Among other things, the mandate should be to gather information on violations of academic freedom, to make recommendations on how to better promote and protect academic freedom, to transmit urgent appeals on alleged violations of academic freedom, and to undertake fact-finding visits. Another function the CEART should take on is delivering general comments to comprehensively interpret substantive provisions of the two Recommendations.

The African Commission on Human and Peoples' Rights also has a role to play to ensure that academic freedom finds its rightful place in the African Charter on Human and Peoples' Rights. The commission's Principles and Guidelines on the Implementation of the Economic, Social, and Cultural Rights Guaranteed in the African Charter on Human and Peoples' Rights gives room for the recognition of academic freedom<sup>59</sup> but the Declaration of Principles on Freedom of Expression in Africa does not.<sup>60</sup> This is in spite of the fact that at the time the Declaration came into existence in 2002, a number of African states had given explicit recognition to academic freedom in their constitutions. Probably on the basis of that narrow approach to the elucidation and expansion in the application of academic freedom, the Special Rapporteur on Freedom of Expression and Access to Information<sup>61</sup> has shied away from making public interventions where violations of academic freedom have taken place in countries such as

<sup>58</sup> Power enjoyed by the Human Rights Committee, which monitors compliance with the International Covenant on Civil and Political Rights.

<sup>59</sup> African Commission on Human and Peoples' Rights, *Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights*, at 34 and 36,

<sup>60</sup> *Resolution on the Adoption of the Declaration of Principles on Freedom of Expression in Africa*, African Commission on Human and Peoples' Rights, Thirty-second Ordinary Session, Banjul, the Gambia, October 17–23, 2002, ACHPR/Res.62(XXXII)02.

<sup>61</sup> The Special Rapporteur on Freedom of Expression was established by the African Commission on Human and Peoples' Rights with the adoption of Resolution 71 at the Thirty-sixth Ordinary Session held in Dakar, Senegal, November 23–December 7, 2004. At the forty-second session held in Brazzaville, Republic of the Congo, in November 2007, the commission decided to renew the mandate of the special rapporteur with the following amended title: Special Rapporteur on Freedom of Expression and Access to Information in Africa.

Malawi,<sup>62</sup> Sudan, and Egypt, even when such violations fall directly in the realm of freedom of expression.<sup>63</sup> Therefore, the African Commission should reformulate the Declaration of Principles on Freedom of Expression in Africa to cover academic freedom and extend the mandate of the special rapporteur to specifically cover academic freedom issues<sup>64</sup> as it did in the case of *Good v. Botswana*.<sup>65</sup>

Further, it would appear that the previous impetus to protect academic freedom provided by the Kampala and Dar es Salaam Declarations has dissipated. Moreover, the historical circumstances that gave birth to the two Declarations have changed dramatically. In 1990, the transition to democracy had just been triggered, and most African states were still in the throes of dictatorship; and the UNESCO Recommendation was seven years away from birth. For this reason, it is perhaps now time for academics across Africa to consider drafting an African version of a *Magna Charta Libertatis Academicæ*<sup>66</sup> (similar to the AAUP's 1940 *Statement of Principles on Academic Freedom and Tenure*, described as constituting a professional "common" or customary law of academic freedom and tenure).<sup>67</sup> In the current socioeconomic and political climates of many African states, such a task will be daunting. However, the costs of failing to protect this basic human right, as the remainder of nations across the globe use universities to create new ideas and intellectual properties essential to the growth of the knowledge economy, will be great for African universities and nation-states alike.

Furthermore, this study reveals that the general absence of formal legal constraints on the abuse of academic freedom may make departmental customs, standards, and mores, which have frequently been developed in response to the dearth of legal protection, of crucial significance in the day-to-day running of university departments as they undertake their duties of teaching and research, often despite unwelcome and unnecessary pressures from national governments. In consequence, future studies are now needed for a more detailed analysis of academic freedom that takes into consideration the continent's history, culture, and level of development of university education. It is equally important to move away from a de jure protection of academic freedom to a de facto one underpinned by a university's internal cultural norms and attitudes shaping the relationship between faculty and management.

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<sup>62</sup> Dr. Blessing Chinsinga, associate professor, Department of Political and Administrative Studies, Chancellor College, University of Malawi, was summoned to the police station over the contents of one of his class lectures in which he gave examples of reasons for popular protest taken from Egypt and Tunisia. He was subsequently dismissed together with other staff. The decision to sack these employees was, however, set aside by the Malawian courts. See CODESRIA, "Violations and Abuses of Academic Freedom in Malawi: CODESRIA Postpones Holding of International Colloquium in Honour of Professor Thandika Mkandawire," [http://www.codesria.org/IMG/article\\_PDF/article\\_a1302.pdf](http://www.codesria.org/IMG/article_PDF/article_a1302.pdf).

<sup>63</sup> The special rapporteur should keep a proper record of violations of the right of freedom of expression and publish this in his or her reports to the African Commission.

<sup>64</sup> Relying on the African Charter on Human and Peoples' Rights, articles 60 and 61.

<sup>65</sup> ACHPRS communication 313/05.

<sup>66</sup> Terrence Karran, "Academic Freedom in Europe: Time for a Magna Charta?," *Higher Education Policy* 22 (June 2009): 163–89.

<sup>67</sup> Ibid.

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